

REMARKS/DISCUSSION:

This Amendment A is being filed within three months after the shortened statutory period for response that ended on December 18, 2006. Accordingly, a Petition for a Three-Month Extension of Time is made a part of the electronic filing hereof.

By this Amendment A, claims 1, 3-11, 13-17, 19 and 20 remain pending in this application. Independent claims 1, 11 and 17 have been amended to include the subject matter of now canceled corresponding dependent claims 2, 12 and 18.

Amendment and/or cancellation of claims is not to be construed as a dedication to the public of any of the subject matter of the claims previously presented. Further, Applicant(s) reserves the right to prosecute the subject matter of such claims in continuation and/or divisional applications.

Applicant has carefully studied the outstanding Office Action. This Amendment is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

Rejection under 35 U.S.C. § 102(b)

Claims 1-4, 6-8, 11-13, 15 and 17-19 stand rejected as being anticipated by U.S. Patent No. 3,935,876 to Massie. Regarding claims 2, 6, 12 and 18, the Examiner states that Massie discloses an analyzer that calculates a second sum over a second interval. Col. 2, lines 3-14.

Applicant respectfully transverses the Examiner's rejection of Claims 2, 6, 12 and 18 (the subject matter of claims 2, 12 and 18 now incorporated into corresponding claims 1, 11 and 17) over Massie because, according to Applicant's understanding, the Massie reference neither teaches nor suggests the elements of the Applicant's invention. It is Applicant's understanding that

a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. See for example MPEP 2131.

Under MPEP 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim, and the elements must be arranged as required by the claim. Under this standard, Applicant submits that Massie et al. fails to anticipate amended independent claims 1, 11 and 17.

Independent claims 1, 11 and 17 include the following limitation:

[an analyzer] which further calculates a second running sum of a total air volume of all air bubbles sensed over a second time interval; compares the second running sum with a second preselected limit; and generates the output when the second running sum exceeds the second preselected limit, wherein the second time interval is longer than the first time interval, wherein the second preselected limit equals the first preselected limit times a multiplier, and wherein the second time interval does not equal the first time interval times the multiplier.

The Massie reference does not, according to Applicant's understanding, teach or suggest a second preselected limit [that] equals the first preselected limit times a multiplier, and wherein the second time interval does not equal the first time interval times the multiplier. (Emphasis added). Nor has the Examiner identified any portion of the Massie reference that teaches Applicant's claimed structure or even discloses an appreciation that the second preselected limit equals the first preselected limit times a multiplier or that the second time interval is different from the first time interval. Clearly, the disclosure at col. 2, lines 3-14 fails to make any disclosure regarding a second time interval, let alone a second time interval that is a different value from the first time interval.

With respect to claim 6, it is interesting to note that claim 6 is dependent upon claim 5, but claim 5 is not noted as being anticipated by Massie. It is odd, therefore, that the Examiner is able to state that claim 6 is anticipated by Massie. Regardless, nowhere does Massie disclose or suggest that the analyzer uses a smaller first time interval for a higher selected dose rate and uses a larger first time interval for a lower selected dose rate. First, Massie, does not even disclose or suggest a dose rate, let alone a time interval as a function of a dose rate, so it is uncertain to Applicants how the Examiner can read all of the elements of claim 6 from Massie.

Rejection under 35 U.S.C. § 103

Claims 5, 9, 10, 14, 16 and 20 stand rejected as being unpatentable over Massie as applied to claims 1, 11 and 17 and further in view of U.S. Patent no. 4,756,706 to Kerns. Based on the previous discussions, neither Massie nor Kerns, alone or in combination, disclose or suggest the claimed invention. Reconsideration is requested.

Under MPEP 2143, in order to establish a *prima facie* case of obviousness, the prior art reference or combination of references must teach or suggest all of the limitations of a claim. A *prima facie* case of obviousness also requires that there be some teaching suggestion, or motivation to modify the references either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. MPEP 2143.01. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.

In view of the foregoing requirements for a *prima facie* case of obviousness, Applicant submits that the combined art of record fails to render the claims obvious. In particular, Applicant notes that the combination of references fails to teach or suggest all of the limitations of each independent claim in accordance with MPEP 2143.03 as noted above.

Further, Applicants submit that the combined art of record fails to teach or suggest all of the limitations recited in dependent claims 5, 9, 10, 14, 16 and 20. In particular, the combined art of record fails to teach or suggest, among other things, wherein the drug infusion subassembly administers the liquid at a selectable dose rate, and wherein the first time interval depends on the selected dose rate. Neither Massie nor Kerns, alone or in combination teach such limitations.

While Applicants have noted several distinctions over the art of record, Applicants note that several other distinctions exist, and Applicants preserve all rights and arguments with respect to such distinctions.

Conclusion

Applicant submits that in view of the discussion, the rejections under 35 U.S.C. §§ 102 and 103 have been overcome and that the invention is now patentable over the cited prior. The Examiner is respectfully requested to reconsider all rejections and pass this case to issue.

Should any minor points remain prior to issuance of a Notice of Allowance, the Examiner is requested to telephone the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, which may be required to Account No. 10-0750/END-5070/VEK.

Respectfully submitted,

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DATED: March 15, 2007